In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1688

JEFF FORT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted on two counts of contempt of Congress, in violation of 2 U.S.C. 192. He was sentenced to a preliminary study under 18 U.S.C. 5010(e) for possible disposition under the Youth Corrections Act. The court of appeals affirmed in an extensive opinion (Pet. App. 1a-37a), which carefully analyzes all of the issues raised by petitioner in the instant petition

and properly rejects the various arguments he again asserts before this Court. We rely here on that well-reasoned opinion.

1. As the court below pointed out (Pet. App. 12a-16a), the constitutionality of 2 U.S.C. 192, providing criminal penalties for contempt of Congress, has been upheld repeatedly since *In Re Chapman*, 166 U.S. 661.

2. Petitioner, on request of his counsel, was accorded the right to have any witness who had defamed him called before the Senate Permanent Subcommittee on Government Operations in his presence. He was not given the right to cross-examine such persons through his own counsel. Action on his request to present additional evidence was deferred until after he had testified (Pet. App. 7a-8a). Since the subcommittee was exercising its investigatory functions, the court below correctly concluded that (Pet. App. 16a-21a) it was not required to permit petitioner to cross-examine witnesses who had named him. Cf. *Hannah* v. *Larche*, 363 U.S. 420, 444-445.

3. As petitioner himself states (Pet. 20), the question whether a witness has adequate notice of the matter under inquiry is related to the issue whether, under the statute (2 U.S.C. 192), he refused "to answer any question pertinent to the question under inquiry." It has long been established that pertinency is an issue of law for the courts. *Sinclair* v. *United States*, 279 U.S. 263. For the reasons spelled out in the opinion below (Pet. App. 29a-31a), the typographical error in an advance copy of the hearing transcript—identifying the Senate authorizing resolution as number 212 rather than number 216—did

not mislead petitioner, who had been fully apprised of the subject matter of the subcommittee's investigation.

4. Thus far petitioner has been sentenced only for examination to determine his suitability for commitment under the Youth Corrections Act; his ultimate sentence has not yet been determined. Even though the offense is a misdemeanor, petitioner may properly be sentenced under the Youth Corrections Act since that statute carries the possibility of having the conviction wiped out. *Carter* v. *United States*, 306 F. 2d 283, 285 (C.A. D.C.).[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

---

[1] In *Warring* v. *Huff*, 122 F. 2d 641 (C.A. D.C.), certiorari denied, 314 U.S. 678, cited by petitioner, (Pet. 23), the court of appeals held that the District of Columbia indeterminate sentence statute could not apply to a conviction for contempt under 18 U.S.C. 401 because that section fixed neither minimum nor maximum penalties. The statute here involved does fix the maximum. Moreover, the Youth Corrections Act carries its own time limitations.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 426551 688